IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3356 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUKESH GOVINDBHAI DAUMA

Versus

DISTRICT MAGISTRATE

Appearance:

MR RD GAGDEKAR for Petitioner

MR SJ DAVE, APP for Respondent No.2

RULE SERVED BY DS for Respondent No. 1

SERVED BY RPAD - (R) for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 27/06/2000

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 25-12-2000

passed by the District Magistrate, Ahmedabad.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive mategrials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to him, the order reflects that the statements of the witnesses have been verified by Sub Judicial Magistrate but as per the copy supplied by the authority to the detenu which is the part of this petition shows otherwise that it has been verified by Deputy Superintendent of Police.

4. I have verified the same more particularly pages 113 and 118 of the compilation of this petition wherein the authority has categorically stated in its order that it has been verified by Sub Divisional Magistrate which appears to be incorrect. As stated earlier, statements of witness Nos.1 and 2 have been recorded by the authority on 21-12-1999 and same have been verified by Deputy Supdt. of Police, Dholka Division, Dholka and therefore it is a case of non-application of mind on the part of detaining authority. In view of the above findings, it is established that the statements have not been verified either by the authority or by the person who has been authorised to do so. Therefore, order of detention vitiates only on this point. Since the petitioner succeeds from only point, he does not press any other point.

5. In view of the above, the petition is allowed. The impugned order of detention dated 25-12-2000 passed by the District Magistrate, Ahmedabad against the detenu is hereby quashed and set aside. The detenu-Mukesh

Govindbhai Gauma is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute with no order as to costs.

(R.P.DHOLAKIA,J.)

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